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Attorneys for Plaintiff RICARDO BERMUDEZ VAQUERO,
on behalf of herself and all others similarly situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**RICARDO BERMUDEZ VAQUERO,
on behalf of herself and all others
similarly situated,**

Plaintiffs,

V.

ASHLEY FURNITURE
INDUSTRIES, Inc., a Wisconsin
Corporation; STONELEDGE
FURNITURE LLC, a Wisconsin
Limited Liability Corporation, and
DOES 1 Through 10, Inclusive

Defendants.

Case No.: 2:12-cv-08590-PA-MAN

CLASS ACTION

**DECLARATION OF JEFF
GERACI IN SUPPORT OF
PLAINTIFF'S EX PARTE
APPLICATION TO CONTINUE
DATE TO FILE FOR
CLASS CERTIFICATION
(LOCAL RULE 23-3), OR IN
THE ALTERNATIVE, COMPEL
DISCOVERY**

Action filed: August 24, 2012
Action Removed: October 5, 2012

1 I, Jeff Geraci, declare:

2 1. I am an attorney licensed to practice before all courts of the State of
3 California. I am Of Counsel to Cohelan Khoury & Singer, representing
4 Plaintiff in this matter. I have personal knowledge of the facts stated in this
5 declaration. If called as a witness, I would competently testify to those facts under
6 oath.

7 2. Plaintiff filed his complaint on August 24, 2012 in California state court
8 on behalf of himself and Defendant's Sales Associates employed during the
9 previous four years. On October 5, 2012, Defendants removed the case to this
10 Court.

11 3. On September 20, 2012, Plaintiff served an initial set of Special
12 Interrogatories (two interrogatories) and Requests for Production of Documents
13 (four requests) to each of the two Defendants in the state court action. Defendants
14 were not obligated to respond after removal, and advised Plaintiff of this by an
15 October 9, 2012 letter. An agreement was later reached regarding service of this
16 limited, initial discovery, and Defendants' responses were received on December
17 10, 2012.

18 4. On November 8, 2012, the parties submitted a Joint Stipulation to
19 Continue Class Certification Filing Date. The Court denied the Joint request.

20 5. During the Early Meeting of Counsel conducted on November 15, 2012,
21 the parties agreed Plaintiff would serve a second set of Interrogatories and
22 Requests for Production of Documents to Defendant Stoneledge Furniture LLC
23 only. The discovery was served via electronic mail on November 15, 2012 and
24 Stoneledge's responses are currently due December 18, 2012. This discovery is
25 limited to issues related to class certification and consists of eleven (11)
26 interrogatories and fifteen (15) document requests. True and correct copies are
27 attached as Exhibits A and B.

28 6. One of Plaintiff's initial interrogatories requests contact information for

1 the putative class. The parties met and conferred and Plaintiff sought to obtain this
2 critical information as soon as possible. Rather than the usual privacy notice
3 procedure which takes over thirty days from the mailing of a notice, the parties
4 agreed Defendant would produce the names and addresses for the putative class,
5 subject to the entry of a protective order, on December 7, 2012. The parties
6 drafted a Joint Stipulation requesting a Protective Order be entered and filed it with
7 the court on November 28, 2012. As of the filing of this Ex Parte Application, the
8 Court has not acted on the proposed Order, and Defendant has not produced
9 contact information.

10 7. Plaintiff served a Notice of Deposition of Defendant Stoneledge
11 Furniture LLC on November 15, 2012. The deposition was noticed for November
12 30, 2012, but Defense advised me that a witness could not be produced on that
13 date. The parties met and conferred on available dates but all the necessary
14 depositions could not go forward before the January 3, 2013 Local Rule 23-3 class
15 certification filing date.

16 8. Plaintiff agreed to significantly reduce the number of PMK categories of
17 testimony, which reduced the number of depositions needed by two or three. Even
18 with these compromises by Plaintiff, defense counsel advised me it was not
19 possible for even the limited number of witnesses to be produced in a reasonable
20 time to allow the depositions to be taken, transcripts to be obtained, and the
21 information reviewed and incorporated in a Motion for Class Certification.
22 Defense counsel advised me the earliest one witness could be produced was
23 December 21, 2012, and the earliest date the other witness can be made available is
24 Saturday, December 29, 2012.

25 9. My firm and co-counsel Kevin Barnes' firm have extensive
26 experience over many years prosecuting class actions, particularly wage and hour
27 matters. Both firms have acted as lead counsel and been approved as class counsel
28 in numerous cases, including cases in the Central District. I have practiced

1 employment law for over twenty years in California, and prosecuted wage and
2 hour class actions on behalf of employees almost exclusively for more than the
3 past three years. Based on my experience, it is my opinion that the discovery
4 responses likely to be obtained in this action, and the anticipated timing of
5 depositions, will not allow adequate preparation of a motion for class certification
6 by January 3, 2013.

7 10. It is my opinion that granting Plaintiff relief from Local Rule 23-3
8 will not prejudice Defendants. This is based in part on the case being filed and
9 removed to this Court so recently, and because Defendants previously joined
10 Plaintiff in stipulating to a request for an order continuing the date for certification.
11 Plaintiff, on the other hand, will be irreparably prejudiced if he is not granted relief
12 from L.R. 23-3 because he will not have an adequate opportunity to conduct
13 discovery, move to compel if necessary, and prepare a motion for class
14 certification.

15 11. Local Rule 23-3 requires Plaintiff to file the class certification motion
16 90 days after the removal of the case to federal court. Defendants' filed their
17 removal papers on October 5, 2012 and Plaintiff's motion for class certification
18 would be due on January 3, 2012.

19 12. Plaintiff respectfully requests the Court waive the Local Rule 23-3
20 requirement until Plaintiff has had an opportunity to complete discovery and
21 prepare a meaningful motion for class certification for the Court's consideration.

22 13. If the Court does not continue the date for filing a motion for class
23 certification, Plaintiff requests the following alternative relief:

24 A. Defendant Stoneledge be ordered to provide to Plaintiff, no later than
25 December 18, 2012, contact information for the putative class, including
26 telephone numbers.

27 B. Defendant Stoneledge be ordered to provide to Plaintiff, no later than
28 December 18, 2012, all compensation plans which applied to the putative

1 class of California Sales Associates.

2 C. Defendant Stoneledge be ordered to provide to Plaintiff, no
3 later than December 18, 2012, documents showing hours worked by a
4 random sample of 20% of California Sales Associates from August 24,
5 2008 to the present, as requested in Plaintiff Request for Production of
6 Documents, Set No. 2, Request 6.

7 D. Defendant Stoneledge be ordered to provide to Plaintiff, no
8 later than December 18, 2012, payroll records for 20% sample of
9 California Sales Associates as requested in Plaintiff Request for
10 Production of Documents, Set No. 2, Request 7.

11 E. Defendant Stoneledge be ordered to produce Troy Muller on December
12 19, 2012 or 20, 2012, for deposition in Los Angeles County, California.

13 F. Defendant Stoneledge be ordered to produce Jose de la Pena on
14 December 20, 2012, or December 21, 2012, for deposition in Los
15 Angeles County, California.

16 14. The discovery and depositions described above are the absolute
17 minimum needed, and the timing for their production the absolute latest they can
18 be received, to allow Plaintiff to prepare an adequate motion for certification.

19 15. Cohelan Khoury & Singer's office closes each year for the holidays
20 and will closed on December 24, 2012 and not re-open until January 2, 2013. I am
21 informed and believe that co-counsel Kevin Barnes has a pre-paid family vacation
22 scheduled for December 24, 2012 through January 6, 2013, and co-counsel
23 Raphael Katri has a pre-paid vacation scheduled for December 27, 2012 through
24 December 30, 2012. If necessary, co-counsel will file separate declarations.

25 16. If the Court cannot grant this relief ex parte, Plaintiff requests the
26 Court shorten the time within in which a motion can be brought, waive the
27 requirements of Local Rule Local Rule 37-1, and hear the motion at the earliest
28 possible date.

1 17. The parties have met and conferred regarding the relief requested and
2 Defendant's counsel does not oppose the Ex Parte Application for continuance of
3 the date to file for certification. Defense counsel does oppose the alternative relief
4 requested.

5 18. I sent an email to counsel for the Defendants on December 12, 2012, at
6 11:34 a.m. advising Plaintiff's ex parte application was being filed today, and a
7 second email at 2:01 p.m., reminding them opposition, if any, is due 24 hours after
8 Plaintiff's ex parte filing.

9 I declare under penalty of perjury under the laws of the United States that
10 the foregoing is true and correct.

12 Dated: December 12, 2012

Jeff Geraci

Jeff Geraci